

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD BRENT KILBOURN,

Plaintiff,

v.

HEIDI E. WASHINGTON, *et al.*,

Defendants.

Case No. 23-13008
Honorable F. Kay Behm
Magistrate Judge Elizabeth A. Stafford

**ORDER GRANTING PLAINTIFF'S MOTION FOR
REFUND OF THE ADMINISTRATIVE FEE
[ECF NO. 22]**

A.

Plaintiff Richard Brent Kilbourn, a prisoner proceeding pro se and in forma pauperis, sues Michigan Department of Corrections (MDOC) employees under 42 U.S.C. § 1983. ECF No. 1. The Honorable F. Kay Behm referred the case to the undersigned for all pretrial matters under 28 U.S.C. § 636(b)(1). ECF No. 12.

In December 2023, the Court granted Kilbourn's application to proceed in forma pauperis under 28 U.S.C. § 1915. ECF No. 5, PageID.20. The order also directed Kilbourn "to make monthly payments to the Clerk of this Court until plaintiff has paid the entire filing fee of

\$402.00”—the \$350 filing fee plus a \$52 administrative fee. *Id.*

Kilbourn now moves for relief from judgment under Federal Rule of Civil Procedure 60(b)(6), arguing that he is exempt from the \$52 administrative filing fee because he is proceeding in forma pauperis. ECF No. 22. Rule 60 is inapplicable because it applies to *final* judgments, orders, or proceedings. See *Hewitt v. McCrary*, 387 F. Supp. 3d 761, 768 (E.D. Mich. 2019) (collecting cases).

But the Court agrees that Kilbourn should not be charged the administrative fee. Under 28 U.S.C. § 1914, parties must “pay a filing fee of \$350” for most civil actions plus “such additional fees only as are prescribed by the Judicial Conference of the United States.” § 1914(a) & (b). The Judicial Conference Schedule of Fees sets an administrative fee of \$52, but that fee “does not apply to applications for a writ of habeas corpus *or to persons granted in forma pauperis status* under 28 U.S.C. § 1915.” District Court Miscellaneous Fee Schedule, provision 14 (eff. Dec. 1, 2020) (emphasis added).¹

Other courts in this circuit have noted that plaintiffs proceeding in forma pauperis pay only the \$350 civil filing fee. See *Williams v. Burton*,

¹ As of December 1, 2023, the administrative filing fee is \$55. See District Court Miscellaneous Fee Schedule, provision 14, available at <https://perma.cc/84EJ-PY8G> (last viewed May 31, 2024).

No. 3:22-CV-00777, 2023 WL 3807032, at *1 n.1 (M.D. Tenn. June 2, 2023) (“While prisoners who are not granted pauper status must pay a total fee of \$402—a civil filing fee of \$350 plus a civil administrative fee of \$52—prisoners who are granted pauper status are only liable for the \$350 civil filing fee.”); *Dunlap v. Fish*, No. 3:23-CV-00154, 2023 WL 4919661, at *1 (M.D. Tenn. Aug. 1, 2023) (same); *Hall v. Scioto Cnty. Jail*, No. 1:23-CV-524, 2023 WL 5748792, at *1 (S.D. Ohio Sept. 6, 2023), *adopted*, 2023 WL 7091372 (S.D. Ohio Oct. 26, 2023) (same).

The Court thus **ORDERS** that Kilbourn be refunded the administrative fee in the amount of \$52.

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

Dated: June 5, 2024

NOTICE TO PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this order, any party may file objections with the assigned district judge. Fed. R. Civ. P. 72(a). The district judge may sustain an objection only if the order is clearly erroneous or contrary to law. 28 U.S.C. § 636. **“When an objection is filed to a magistrate judge’s ruling on a non-dispositive motion, the ruling**

remains in full force and effect unless and until it is stayed by the magistrate judge or a district judge.” E.D. Mich. LR 72.2.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 5, 2024.

s/Julie Owens
JULIE OWENS
Case Manager